

Metis Settlements General Council

Mineral Projects Policy

Policy GC-9603

Passed by Metis Settlements General Council

on September 27, 1996

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Metis Settlements General Council Mineral Projects Policy

*Policy GC-P9603
Adopted September 27, 1996*

Part I - Context

I.1 Background

The Metis Settlement areas have been set aside, and title transferred to the Metis Settlements General Council, to provide a land base for the preservation and enhancement of Metis culture and identity. Outside interests also use these lands, however, for the purpose of finding and removing minerals. Legislation by the Province and the General Council creates a legal framework for these new uses in which the General Council and Settlement councils can regulate the use and related activities and provide for their licensing and taxation.

I.2 Purpose

The purpose of this Policy is to

- (a) make it possible to use land, set aside to support a Metis way of life, for other uses and activities such as finding and removing minerals;
- (b) ensure that these uses and activities support, as far as possible, the purposes for which the land was set aside;
- (c) create a means of ensuring these uses and activities contribute fairly to the cost of providing community services;
- (d) set guidelines for cooperation among the Settlements in relation to these uses and activities.

I.3 Definitions

(1) In this Policy

- (a) *Act* means the *Metis Settlements Act*;
- (b) *Affected Settlement* means the Settlement whose Settlement Area is directly affected by a particular project, Posting Request, or related activity;
- (c) *Board* means the executive committee established as the Metis Settlements General Council Board under section 218 of the Act;
- (d) *Co-management Agreement* means the Co-Management Agreement included as Schedule 3 of the Act, as amended;
- (e) *ELLAP* means the Metis Settlements Appeal Tribunal Existing Leases Land Access Panel established under section 187(1) of the Act;
- (f) *improvement* means
 - (i) a structure,
 - (ii) any thing attached or secured to a structure, that would be transferred without special mention by a transfer or sale of the structure,
 - (iii) a mobile unit, and
 - (iv) machinery and equipment;

- (g) **landholder**, when used in reference to a particular parcel of land, means the person shown in the Land Registry as the holder of the Metis title to the parcel;
 - (h) **LAP** means the Metis Settlements Appeal Tribunal Land Access Panel established under section 186(1) of the Act;
 - (i) **Master Development Agreement** means a Development Agreement as defined in the Co-management Agreement;¹
 - (j) **minerals** means all naturally occurring minerals as defined in the Letters Patent;
 - (k) **project** means a use of, or activity in, on or under, patented land related to
 - (i) an "existing mineral lease" as defined in section 111 of the Act,
 - (ii) a right to work or develop minerals that is acquired under the Co-management Agreement,
 - (iii) a right in respect of a pipeline as defined in the *Pipeline Act*, or
 - (iv) a program of geophysical exploration;
 - (l) **project agreement** means a development agreement as defined in section 111 of the Act or any other agreement made by the General Council, Affected Settlement, and project operator, in order to enable a project;²
 - (m) **project area** means an area of land designated for a project;
 - (n) **project interest** means an interest in land as defined in section 3.5, acquired by grant or right of entry order to support a project;
 - (o) **project licence** means a licence granted by a Settlement authorizing the activities associated with a specific project;
 - (p) **project operator** means a person who is granted a project licence;
 - (q) **standard form** means a form adopted by the General Council according to this Policy as part of a system of regulating projects;
- and terms defined in the *Metis Settlements Act*, or regulations made under it, have the same meaning when used in this Policy, unless the context makes such an interpretation unreasonable.
- (2) When "or" is used in this Policy without a clear indication that some other meaning is intended, it is meant inclusively.³

1.4 Footnotes

Footnotes are part of the Policy included to help with interpretation.

¹ Note that a Master Development Agreement may provide a framework for a number of site specific project agreements.

² This means the General Council, Settlement, and project operator all must be part of the agreement, but there could be other persons involved as well.

³ In other words, a series of conditions joined by "or" is satisfied if any or all of the conditions are satisfied.

Part 2 - Roles and Responsibilities

2.1 Settlement's primary authority

Subject to this Policy, the Affected Settlement has the sole authority to decide all matters related to a project in a Settlement Area except matters requiring united action.

2.2 United action

- (1) For the purposes of this Policy, matters for united action are:
 - (a) carrying out General Council's rights and responsibilities under the Co-Management Agreement, including the adoption of standard posting terms to be included in the Notice of Public Offering for the posting of Minerals;
 - (b) deciding what kinds of fees, royalties, levies, taxes, and other payments must be made for different types of projects,⁴ including, for each kind of payment,
 - (i) the minimum amount that must be paid, if any; and
 - (ii) the amount that must be paid to the Consolidated Fund, if any;
 - (c) determining the standard forms and procedures to be used by all Settlements in enabling projects; and
 - (d) representing the collective interests of the Settlements, including those of the General Council, in discussions and agreements with other governments.
- (2) The General Council has the sole authority to act on matters for united action, but may do so only in accordance with a special resolution of the Assembly that
 - (a) is consistent with this Policy,
 - (b) does not unfairly discriminate against any Settlement, and
 - (c) either specifically authorizes the action, or gives a specified person or group the authority to deal with such matters within specified guidelines.⁵

2.3 General Council action

- (1) Unless this Policy, or a General Council resolution, says otherwise, the President of the General Council is the General Council's representative in carrying out this Policy.
- (2) The President can assign any presidential function under this Policy to another person.

⁴ Examples of types of projects include: geophysical survey, oil/gas well drilling and production, road use, etc.

⁵ For example, the General Council Assembly could adopt a special resolution giving the Board, or a special committee power to deal with certain kinds of issues. Or it could give an officer or agent of the General Council the authority to sign some kinds of documents provided the documents met certain conditions.

Part 3 - Providing Land for Projects

3.1 Purposes

The purpose of this Part is to provide for the creation of the land interests needed to support projects, and to enable the taxation of these interests and related improvements.

3.2 Grant of project interest

- (1) The landholder of a parcel may grant a project interest in the parcel to enable a project, but the grant cannot be inconsistent with the Settlement's project licence and any part that is has no effect.
- (2) The grant may be for any term required to carry out the project and may include rights to enter, alter,⁶ occupy, or otherwise use land for the project.
- (3) The grant is subject to the existing rights of other occupants of the project area, as modified by their consent or by an order of the LAP or ELLAP.

3.3 Existing grants

Any grant of an interest in land in a project area made to enable a project, and made before this Policy came into effect, is, without diminishing it in any way or reducing any rights it provided, deemed to be a grant of a corresponding project interest.

3.4 Land Policy amended

- (1) Sections 2.8, 2.9, 2.10 and 3.3(1) of the *Land Policy* do not apply to a grant of a project interest.
- (2) The Land Policy is amended by rescinding section 3.7.⁷

3.5 Nature of a project interest

- (1) A project interest is an interest in land sufficient, subject to any limitations contained in the grant, to support a project.
- (2) A project interest may be registered in the Land Registry if
 - (a) the grant includes a right to prevent persons, other than Settlement members, from using the project area, and
 - (b) the grant is for a term of at least one year.
- (3) A LAP or ELLAP right of entry order specifying a project area and use of land creates a corresponding project interest.

3.6 Taxable property

A project area, including the project related improvements on it, is business property for the

⁶ Examples of altering land include clearing it, digging in it, and placing equipment or structures on it.

⁷ This is the section providing for the granting of land rights in relation to non-renewable resources, authorized projects, and development agreements.

purposes of the Metis Settlements General Council *Business Property Contributions Policy*.^{*}

3.7 Compensation

- (1) In obtaining a grant of a project interest, the amount of compensation to be paid for the interest, or for damages to the land or affected persons, must be determined by an agreement with the landholder and persons affected, or by an order of the LAP or ELLAP.
- (2) A Settlement may, by bylaw, provide for the distribution of compensation received in relation to a project.

Part 4 - Regulating Project Activities

4.1 Purpose

The purpose of this Part is to provide for the licencing and regulation of project related activities.

4.2 Development control

- (1) No project can proceed in a Settlement area except in accordance with a project licence approved by the Settlement council.
- (2) The Settlement council may adopt, by bylaw or resolution, a development plan for any part of the Settlement area and in that plan specify conditions to be included in any project licence granted for a project in that part of the Settlement area.
- (3) In approving an application for a project licence, the Settlement council may add any conditions to a standard form it considers necessary to protect the Settlement Area lands, culture, or community, provided the added conditions are consistent with the standard form and Master Development Agreement, if any.

4.3 Project licence

- (1) A project licence may relate to one or more parcels of land.
- (2) A project licence operates as approval of the project to proceed and as an ongoing annual licence permitting project activities.
- (3) A project licence may provide for the payment of an initial fee in relation to project approval and an annual fee in relation to the licencing of ongoing project activities.
- (4) A project licence cannot be revoked except as provided for by General Council Policy, this bylaw, the project agreement, or a Master Development Agreement governing the project.

4.4 Obtaining a Project Licence

- (1) To obtain a project licence the project operator must apply to the Affected Settlement and provide a copy of the application to the General Council.
- (2) The General Council may, on receiving notice of an application for a project licence, notify the Affected Settlement and project operator that it must have advance notice of any negotiations on special terms in the licence or related agreements and the opportunity to participate.

^{*} An analogy outside the Settlement Areas would be to consider the interest and improvements as property subject to a property tax.

4.5 General Council consent

- (1) The General Council cannot withhold its consent from a document required to enable a project unless it considers
 - (a) the document is inconsistent with this Policy, or guidelines made under it, and
 - (b) the inconsistency may have a negative effect on the General Council or a Settlement other than the Affected Settlement.
- (2) If the General Council initially withholds consent under subsection (1), the question of whether or not consent should be given is a matter to be determined by the Board.

Part 5 - The Co-Management Agreement

5.1 Purpose

The purpose of this Part is to provide a framework for implementing the Co-Management Agreement.

5.2 Interpretation

- (1) In this Part,
 - (a) *Minister* means the Minister as defined in the Co-Management Agreement;
 - (b) *MSAC* means a Metis Settlement Access Committee established according to Article 201 of the Co-Management Agreement;
 - (c) *Posting Coordinator* means the representative of the Affected Settlement and General Council appointed under Article 401 of the Co-Management Agreement for the purpose of consulting with potential Bidders on a posting request.
- (2) In this Part, the days referred to in any provision that contains a reference to a period of days are neither a Saturday nor a holiday as defined in the *Interpretation Act*.

5.3 Posting Coordinator

- (1) The President may appoint a person as Posting Coordinator to administer all referrals of Posting Requests, but for any particular posting the General Council and Affected Settlement may agree that some other person should act as Posting Coordinator.
- (2) On each referral of a Posting Request the Posting Coordinator's role is to
 - (a) enable the General Council and Affected Settlement to share all information relevant to the Request;
 - (b) communicate General Council and Affected Settlement views on the terms and conditions in the Notice of Public Offering to potential Bidders;
 - (c) coordinate communication between potential Bidders, the Minister, the General Council, and the Affected Settlement; and
 - (d) to do anything else of a related nature that the General Council and Affected Settlement consider useful in a particular case.
- (3) Unless the General Council or Affected Settlement provides specific authority in a particular case, the Posting Coordinator has no authority to negotiate any matters related to the offering

on behalf of the General Council or the Settlement.

5.4 Dealing with Referrals

- (1) In this section "posting consensus" means, in relation to a referral of a Posting Request, an agreement between the General Council and Affected Settlement as to
 - (a) whether or not the Minerals that are the subject of the Posting Request should be posted, and
 - (b) what special terms and conditions should be included in the Notice of Public Offering in relation to the minerals posted.
- (2) When the Minister refers a Posting Request to an Affected MSAC, the General Council and Affected Settlement must, respecting each other's authority and any standard posting terms adopted under this Policy, try to reach a posting consensus.
- (3) The Posting Coordinator must notify the Affected MSAC when there is a posting consensus.
- (4) If a posting consensus has not been reached within 21 days of the Minister's referral, the Posting Coordinator must advise the Affected MSAC that, unless details of an agreement are provided within 5 days, it should consider the Affected Settlement and General Council as jointly recommending the Posting Request be denied

5.5 Response to Minister's Conditions

- (1) If either the General Council or Affected Settlement object to a term or condition of posting proposed by the Minister, it must give the Posting Coordinator written notice of its objection.
- (2) In case of an objection, the General Council and Affected Settlement must agree on a joint response to the Minister's proposal, and advise the Posting Coordinator of what that response is, within 10 days of when the proposal was received by MSAC, or the General Council and Affected Settlement will be deemed to have no objection to the Minister's proposal.

5.6 Negotiating Master Development Agreements

- (1) When the Minister has selected a Bidder, the General Council and Affected Settlement may, within their respective authorities, negotiate a Master Development Agreement.
- (2) If a Master Development Agreement is inconsistent with this Policy, or guidelines adopted under it, in a way that may negatively affect the General Council or another Settlement, the General Council may only enter into the agreement if authorized to do so by a special resolution of the General Council Board.
- (3) If the General Council and Affected Settlement have not signed a Master Development Agreement within 7 days of receiving the Bidder's name, the Bidder's Bid is deemed to be rejected and the Posting Coordinator must immediately notify the Minister.

5.7 Amendments

The setting of time periods and General Council procedures for this Part are matters for united action and consequently can be amended in any manner consistent with the Co-Management Agreement as provided for in subsection 2.2(2).

Part 6 - General Matters

6.1 Information sharing

The Affected Settlement and the General Council each have a right to all geological information either acquires in relation to an application for a project, but that right is conditional on providing reasonable assurances of confidentiality.

6.2 Indemnities

- (1) No agreement made under this Policy can include a provision that would make a Settlement that has not signed the agreement, or the General Council, liable for any losses related to the agreement, and any such provision is void.
- (2) Each Settlement indemnifies all other Settlements and the General Council against any loss or damage arising from a project authorized by the Settlement in its Settlement Area.
- (3) In this section "agreement" includes any licence, permit, or document creating rights and responsibilities related to a project.

6.3 Disputes and uncertainties

If there is a dispute or uncertainty over the meaning or effect of a provision of this Policy, General Council or any Settlement can apply to the Metis Settlements Appeal Tribunal to resolve the matter.

6.4 Nature of this Policy

As a consensus of all Settlements, this Policy is intended to operate both as legislation of the General Council under the *Metis Settlements Act* and as an agreement among all of the Settlements and the General Council.

Mineral Projects Policy Model Bylaw

Part I - Context

1.1 Background

Although the Settlement Area was set aside as a land base to provide for the preservation and enhancement of Metis culture and identity, it is used by others for the purpose of finding and removing minerals. Legislation by the Province and the General Council creates a framework for enabling such activities, providing for their licensing, regulation, and taxation, and allowing for a General Council Policy on such matters to include a model by-law.¹

1.2 Purpose

The purposes of this by-law are to

- (a) enable land uses and activities related to mineral projects in the Settlement Area while preserving an environment that will sustain a Metis way of life;
- (b) create a system of payments on the property associated with mineral projects that will ensure the property contributes fairly to the viability of the Settlement;²
- (c) address the effect of mineral projects on the capacity of the land to sustain individuals and the community in more traditional ways; and
- (d) establish procedures for fairly sharing the burden and benefit of these uses and related activities between the Settlement and Affected Settlement residents.

1.3 Interpretation

The definitions and rules of interpretation of the *Mineral Projects Policy* apply to this by-law.

Part 2 - Project Licence

2.1 Prohibition

- (1) No activity or use related to a project is permitted in the Settlement Area unless it is authorized by a project licence.
- (2) The Settlement council may adopt, by bylaw or resolution, a development plan for any part of the Settlement area and in that plan specify conditions to be included in any project licence granted for a project in that part of the Settlement area.
- (3) A project licence can only be granted if the Settlement Council is satisfied that

¹ For reference see sections 51, 99, 222(1)(c), (i), (m)-(s) and Schedule 1, s. 14, of the *Metis Settlements Act*, and the *General Council Mineral Projects Policy*.

² The property referred to includes a project interest, and the payments on such property and related rights should be considered as "taxes" as provided for in section 166(1) of the *Metis Settlements Act*.

- (a) the proposed use of land conforms with any development plans the Settlement Council has adopted;
 - (b) operations will not begin in the Settlement Area under the licence until the operator has obtained all approvals required by provincial law;
 - (c) a Master Development Agreement, if necessary, has been made,
 - (d) the project operator has signed a project agreement addressing issues such as compliance with local laws and development plans, work practices, payment of fees, taxes, and compensation, and community benefit from the project; and
 - (e) the project operator has acquired the rights to enter and use all parts of the project area, whether by agreement with landholders and occupants or by order.
- (4) Notwithstanding subsection (3), the Settlement council may approve the granting of a temporary project licence for a specified number of days if it is satisfied that an emergency situation exists and that the conditions of subsection (3) will be satisfied within a reasonable period of time.

2.2 Project licence

- (1) A project licence may relate to one or more parcels of land.
- (2) A project licence operates as approval of the project to proceed and as an ongoing annual licence permitting project activities.
- (3) A project licence may provide for the payment of an initial fee in relation to project approval and an annual fee in relation to the licencing of ongoing project activities.
- (4) A project licence cannot be revoked except as provided for by General Council Policy, this bylaw, the project agreement, or a Master Development Agreement governing the project.

2.3 Obtaining a project licence

- (1) Applications for project licences must be made to the Settlement office.
- (2) The Settlement administrator may issue a project licence when directed to do so by Settlement Council resolution.
- (3) No project licence is effective unless signed by the Settlement administrator.

2.4 Contents of a project agreement

The Settlement Council may impose any conditions in a project agreement, consistent with the *Mineral Projects Policy* and any related Master Development Agreement, that it considers of benefit to the community, such as

- (a) location of project and related work and facilities,
- (b) rules and procedures for entering land and doing the work,
- (c) provisions required in agreements with landholders and occupants,
- (d) measures for promoting local employment and economic development,
- (e) measures for the protection of the community, culture, and environment, and
- (f) fees, charges, and taxes payable, as a specified amount or formula.

2.5 Consulting occupants

- (1) When the Settlement Council receives an application for a project licence it must try to ensure occupants of the project area are consulted about the project, including
 - (a) what sort of work will be done and where,
 - (b) the general rules that the Settlement will be applying to the project and any special conditions that may be appropriate given the nature of the project area, and
 - (c) the compensation for access and damages that the operator may be expected to pay landholders and occupants.
- (2) If the Council is unable to contact an occupant in person within 7 days of the application, it can satisfy its responsibilities under subsection (1) by sending the information to the occupant by mail.

Part 3 - Environmental Protection

3.1 Preliminary inspection

- (1) Unless the Settlement Council provides a written exemption, before a project licence is issued the project operator must inspect the project area with a representative of the Settlement to identify environmentally or culturally sensitive areas.
- (2) If the Settlement Council determines that a project is likely to damage an environmentally or culturally sensitive area, it may impose any conditions necessary to prevent the project from causing unacceptable harm.

3.2 Roads

Unless the Settlement Council establishes other conditions for a specific project, the project operator must ensure that roadways in the project area are

- (a) constructed to a low profile, and if gravelled, topped with rock particles at most 5 cm in diameter, and
- (b) kept properly maintained and free of weeds.

3.3 Fencing

- (1) Except where the Settlement Council decides it is unnecessary, the project operator must
 - (a) put a good fence around the project area,
 - (b) replace and repair any fences removed or damaged in carrying out the project, and
 - (c) ensure that gates allowing access to the project area are closed when not in use.
- (2) If the Settlement Council, at any time before or during the project, determines that a livestock guard is necessary at a point of entry to the project area, it may require the project operator to construct such a guard.

3.4 Weeds

- (1) The project operator must ensure that weeds in the project area are controlled in a manner consistent with good oilfield practice and relevant legislation.
- (2) Chemical weed control measures may not be used except with the written permission of the

Settlement.

3.5 Stream protection

In carrying out a project the project operator must, except as exempted by the Settlement Council:

- (a) construct and maintain culverts and any other structures in the project area needed for water to flow easily through natural drainage courses;
- (b) fix any interference its operation cause to natural water drainage;
- (c) remove, without damaging the channel, any obstructions its operations cause to the natural flow of water in water courses, streams, and channels;
- (d) ensure that any project related cutting, clearing, and digging does not cause soil erosion, sedimentation in streams, or a reduction of water capacity;
- (e) reestablish and maintain a sufficient growth of vegetation to prevent accelerated erosion of all bare soil areas in the project area; and
- (f) prevent project activities from causing the pollution of land or water in the Settlement Area, and in particular prevent the accumulation of waste material that might, during spring runoff or flood periods, be carried into the water system.

3.6 Waste materials

- (1) In this section "waste materials" includes sump fluids, garbage, and all other waste byproducts related to the finding or removing of minerals on land inside or outside the Settlement Area.
- (2) No one may dispose of waste materials within the Settlement Area except as authorized in writing by the Settlement Council.
- (3) Any disposal of waste materials in the Settlement Area must comply with good oilfield practice, provincial legislation, and the directions of the Settlement Council.
- (4) Anyone disposing of waste materials contrary to this section will be responsible for the cost of removing the improperly disposed materials and related clean up and reclamation.

3.7 Environmental spills

- (1) The project operator must establish a monitoring system that ensures the Settlement office is notified of any potentially harmful project related spill within a reasonable time of its occurrence.
- (2) When it has good reason to believe that a harmful spill has occurred, or is likely to occur, the Settlement Council can order the project operator to take whatever reasonable corrective action the situation requires.
- (3) In determining the appropriate corrective action, the Settlement Council must, if possible, consult the project operator.

3.8 Reclamation

- (1) Except where the Settlement Council specifies otherwise, the project operator must
 - (a) strip and preserve the topsoil of the project area, keeping it separate from the subsoil and woody debris, as required by good soil conservation practices and legislation; and
 - (b) as soon as practicable considering project operations, return topsoil to the project area in

about the same depth as it was before the project started and reseed to restore suitable ground cover.

- (2) In addition to the provisions of this bylaw, the project operator must comply with the requirements for restoration, reclamation, and abandonment set out in the *Environmental Protection Act* and other applicable provincial laws.

Part 4 - Payments Required

4.1 Licence fees

- (1) All project licence holders must pay to the Settlement the project licence fees and other charges as set out in the Fee Schedule attached as Schedule A.
- (2) The Settlement Council can amend the Fee Schedule as it considers necessary.

4.2 Compensation

- (1) The minimum rates of compensation to be paid by project operators for access to parcels in a project area, and for certain types of damages related to the project, are set out in Schedule A of this bylaw.
- (2) The Settlement Council can amend the minimum compensation schedule when it considers such an amendment to be in the best interests of the Settlement or its members.
- (3) An occupant does not qualify for compensation unless they have actual possession of, or a registered interest in, land in the project area.

4.3 Special damages

Nothing in this bylaw replaces or reduces an occupant's right to special compensation for special damages resulting from the project.

4.4 Other fees and taxes

The requirement to pay compensation, licence fees, and other charges in relation to a project does not affect any liability for taxes or contributions created by agreement, Settlement bylaws, or General Council Policy.

Part 5 - General Matters

5.1 Administration

- (1) Unless the Settlement has approved a licence or agreement saying otherwise, all payments required under this bylaw must be made to the Settlement.
- (2) The Settlement must pay out the money it gets on behalf of other persons to the appropriate occupants and to the General Council as provided for in the relevant Policy, licence, agreement, or order.

5.2 Suspension or revocation of licence

- (1) If the Settlement Council determines that there are activities or land uses related to the project that are contrary to this bylaw or the terms of the project licence or project agreement, it may give the project operator notice of the violation and directions to remedy the situation.
- (2) At the time of giving notice under subsection (1), the Settlement Council may also, if it considers it necessary for the environmental health of the community, suspend the project licence.
- (3) If the project operator has not begun correcting the situation within 30 days of being notified, the Settlement Council can cancel the project licence.
- (4) The project operator can, within 30 days of being notified of a suspension or cancellation of the project licence, appeal the action to the Metis Settlements Appeal Tribunal.

5.3 Offences and penalties

- (1) A person who knowingly contravenes a provision of this bylaw, including a failure to comply with an order of the Settlement Council made under sections 3.7(2), is guilty of an offence.
- (2) A person who is guilty of an offence under subsection (1) is liable to a fine not exceeding \$2500, payable to the Settlement.

Metis Settlements
General Council

Mineral Projects Policy
MODEL BYLAW FEE SCHEDULE

Schedule A
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The following schedule of Mineral Project Licence Fees and charges is effective from the date of passage of the bylaw:

Project Class	Initial Project Licence Fee	Annual Project Licence Fee	Other Charges
Well Sites (including access roads)	\$ 150 /hectare	\$ 100 /hectare	
Pipeline	\$ 100 /km	\$ 75 /km	
Geophysical Survey	\$ 100 /km	\$ 0	
Other			